

United States Courts
Southern District of Texas
FILED

SEP 01 2022

Nathan Ochsner, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

Vs.

Jose Manuel Gutierrez

CRIMINAL COMPLAINT

Case Number: C-22-992M

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about April 13, 2022 in Nueces County, in the Southern District of Texas, defendant, Jose Manuel Gutierrez

whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to influence, delay, or prevent the testimony of any person in an official proceeding; whoever corruptly otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.


in violation of Title 18 United States Code, Section(s) 1512
I further state that I am a(n) Border Patrol Agent and that this complaint is based on the following facts:
Official Title

See Attached Affidavit of U.S. Border Patrol Agent Ruben Guerra Jr

Continued on the attached sheet and made a part of this complaint:

☒ Yes ☐ No

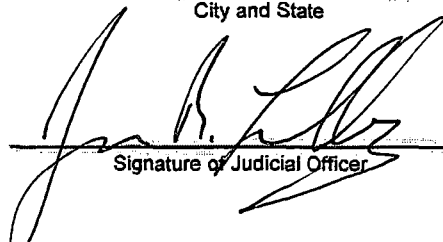
Submitted by reliable electronic means, sworn to, signature attested telephonically per Fed.R.Crim.P.4.1, and probable cause found on the:


Signature of Complainant
Ruben Guerra Jr
Printed Name of Complainant

September 1, 2022
Date

at Corpus Christi, Texas
City and State

Jason B. Libby U.S. Magistrate Judge
Name and Title of Judicial Officer


Signature of Judicial Officer

AFFIDAVIT

The information contained in this report/affidavit is based upon my personal participation in the investigation, which included, but is not limited to information relayed to me by other agents and officers participating in the investigation.

FACTS/DETAILS:

On April 11, 2022, Jose Manuel GUTIERREZ, was arrested at the United States Border Patrol checkpoint near Falfurrias, Texas, for transporting or attempting to transport an alien within the United States. During the encounter, Border Patrol Agents discovered a total of ten people concealed in the sleeper portion of the tractor driven by GUTIERREZ. Byron Levi MENJIVAR-Amaya and Marco Antonio BOITES-Martinez were among the ten undocumented aliens found in the tractor. Both MENJIVAR and BOITES were designated and held as material witnesses in this case. During his initial testimony, MENJIVAR stated he and nine other subjects were at an unknown house, when a blue commercial truck arrived. MENJIVAR stated the driver of the blue truck got out and instructed them to get into the cab and the driver covered them with blankets once they were inside. BOITES stated during his initial testimony that he was transported to an unknown ranch where there was a tractor parked. BOITES stated the driver instructed them to get into the tractor. BOITES stated the driver of the tractor left for about an hour and returned and turned the engine on, as well as the air conditioning. Both MENJIVAR and BOITES were able to identify Jose Manuel GUTIERREZ as the driver of the tractor when presented with a photo line-up

On April 13, 2022, the material witnesses, BOITES and MENJIVAR, consented to an initial appearance by video conference. According to the Court docket text, both BOITES and MENJIVAR appeared before Magistrate Judge Mitchel Neurock between approximately 9:31-9:41 AM. That same day, April 13, 2022, GUTIERREZ appeared via video conference before Magistrate Judge Mitchel Neurock. The docket indicates GUTIERREZ appeared between approximately 10:16-10:29 AM.

On April 27, 2022, GUTIERREZ was indicted by a Federal Grand Jury in the Southern District of Texas, Case Number C-22-251. Count One: knowingly and in reckless disregard of the fact that an alien had come to, entered, and remained in the United States in violation of law, did knowingly and intentionally conspire, with each other, and with other persons known and unknown to the Grand Jury, to transport, move, attempt to transport, and attempt to move said alien within the United States in furtherance of such violation of law by means of motor vehicle; 8 USC 1324(a)(1)(A)(ii), 1324 (a)(1)(A)(v)(I), and 1324(a)(1)(B)(i); Count Two: did knowingly and in reckless disregard of the fact that Byron Levi MENJIVAR-Martinez-Amaya was an alien who had come to, entered, and remained in the United States in violation of law, transport, move, attempt to transport, and attempt to move said alien within the United States in furtherance of such violation of law by means of a motor vehicle 8 USC 1324(a)(1)(A)(ii), 1324(a)(1)(A)(v)(II), and 1324(a)(1)(B)(ii); and Count Three: did knowingly and in reckless disregard of the fact that Marco Antonio BOITES-Martinez was an alien who had come to, entered, and remained in the United States in violation of law, transport, move, attempt to transport, and attempt to move said alien within the United States in furtherance of such violation

of law by means of a motor vehicle 8 USC 1324(a)(1)(A)(ii), 1324(a)(1)(A)(v)(II), and 1324(a)(1)(B)(ii).

On May 31, 2022, Federal Magistrate Judge Jason B. Libby signed an order granting a motion to depose material witnesses MENJIVAR and BOITES. Deposition of the material witnesses was held on June 16, 2022, at 9:00 AM. During the deposition, both material witnesses, MENJIVAR and BOITES, stated they had climbed into the tractor at a gas station, while GUTIERREZ was away from the vehicle. MENJIVAR and BOITES stated they did not know GUTIERREZ at the time they climbed into the tractor and had no contact with him. There statements were inconsistent with their initial statements to Border Patrol Agents.

On August 31, 2022, while conducting a debrief of material witnesses MENJIVAR and BOITES, they both admitted to having changed their testimony and testifying in the deposition contrary to their initial statements to Border Patrol. MENJIVAR and BOITES stated they changed the testimony because the defendant, Jose Manuel GUTIERREZ, had told them to do so while they were waiting for their initial appearance before the magistrate judge. MENJIVAR and BOITES stated they were afraid something might happen to them, so they complied with GUTIERREZ's instructions. BOITES stated because he must return to Mexico's northern border region, he was afraid something might happen to him, and he felt more compelled to change his testimony. MENJIVAR and BOITES both stated GUTIERREZ instructed them to say they did not know him and that they had gotten into the tractor at a gas station without his knowledge.

The statements made by MENJIVAR and BOITES during the debrief match statements made by GUTIERREZ during phone calls placed while he was being held at the Coastal Bend Detention Center. During a call placed by GUTIERREZ to his daughter on April 14, 2022, GUTIERREZ states, "I think they climbed in at the truck stop, baby girl, when I stopped to get diesel. I spoke with those guys, and uhm, uhm, it seems like that is what they are, they are, it looks like they are going to change their testimony. I do not know." During another call made by GUTIERREZ on April 17, 2022, GUTIERREZ says "Listen Mija. Do you have a pen so you can write down some names?" Later in the call GUTIERREZ says, "It is, uhm, B-Y-R-O-N. Byron Levi." GUTIERREZ then spells out L-E-V-I. GUTIERREZ then spells out the last name M-E-N-J-I-V-A-R, MENJIVAR. During another call, GUTIERREZ then instructs his daughter to write down the name Marco Antonio BOITES-Martinez. GUTIERREZ then instructs his daughter to give those two names to another unknown person. GUTIERREZ then tells his daughter the next name is very important. GUTEIRREZ states he cannot say the name, but it the same name as someone's boyfriend. GUTIERREZ then spells out the last name N-E-U-R-O-C-K. GUTIERREZ then states, "That is the asshole that is going to give us the sentence." GUTIERREZ instructs his daughter to provide those names to another unknown person so he can begin to "work them."

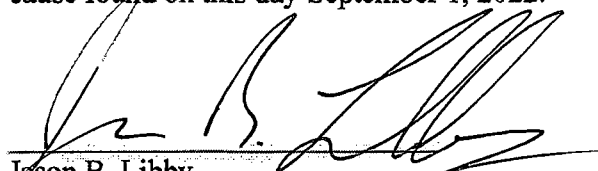
DISPOSITION:

The facts of this case were presented to the Assistant United States Attorney's Office who accepted Jose Manuel GUTIERREZ for prosecution of 18 USC 1512, Tampering with a witness, victim, or an informant.



Ruben C. Guerra Jr.
Border Patrol Agent

Submitted by reliable electronic means, sworn to, signature
attested telephonically per Fed.R.Crim.P.4.1, and probable
cause found on this day September 1, 2022.



Jason B. Libby
United States Magistrate Judge